

1 0083B

2 BEFORE THE SHORELINES HEARINGS BOARD
3 STATE OF WASHINGTON

4 CONCERNED SOUTHSIDE CITIZENS,)

5 Appellant,)

6 v.)

7 CITY OF BELLINGHAM and PORT)
8 OF BELLINGHAM,)

9 Respondents.)
10

SHB No. 89-73

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

11 On December 11, 1989 Concerned Southside Citizens filed an appeal
12 with the Shoreline Hearings Board contesting the City of Bellingham's
13 issuance of a shoreline substantial development to the Port of
14 Bellingham for a restaurant and other facilities within the ferry
15 terminal on Bellingham Bay, in the Fairhaven area. The Attorney
16 General's Office and Department of Ecology certified the appeal.

17 The matter was concluded on September 4, 1990 with the filing of
18 the Port's Reply Brief. The hearing on the merits was held on August
19 1 and 2, 1990 in Bellingham. A site visit was held with the parties.
20 Present for the Board the first day were Shoreline Hearing Board
21 Members: Judith Bendor, chair and presiding, Harold S. Zimmerman,
22 Nancy Burnett, Robert Schofield and Richard Gidley. Member Robert
23 Schofield presided on the second day when all members were present
24 except Chair Bendor, who has reviewed that day's record.

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB No. 89-73

1 Concerned Southside Citizens was represented by Attorney
2 Stafford L. Smith. The City of Bellingham was represented by
3 Assistant City Attorney Dawn Sturwold. The Port of Bellingham was
4 represented by Attorney Frank J. Chmelik. Court Reporter Suzanne
5 Navonne (Bartholomew, Moughton & Assocs.) took the proceedings.

6 From the testimony heard, exhibits admitted and examined, and
7 counsel's contentions, the Board makes these:

8 FINDINGS OF FACT

9 I

10 Concerned Southside Citizens (CSC) is a nonprofit corporation
11 composed of residents and other concerned individuals in the area of
12 the ferry terminal.

13 II

14 In September 1988 the Port of Bellingham applied for a shoreline
15 substantial development permit to build a ferry terminal in the
16 Fairhaven area, to serve as the southern terminus of the Alaska State
17 ferry system. The terminal is within the Urban Environment II of the
18 Bellingham Shoreline Master Program.

19 In November 1988 the City issued this permit. CSC filed an
20 appeal with the Shoreline Hearings Board, which became our SHB No.
21 88-58. The parties settled the appeal. One settlement condition
22 required that an Environmental Impact Statement (EIS) be prepared.

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III

Subsequently, the City required the Port to obtain a separate shoreline permit for the leasing of some of terminal's interior space. The Port applied for this permit in June 1989.

On September 21, 1989, the Planning Commission's Shoreline Committee held a public hearing on this permit application, to consider the Planning and Economic Development Director's recommendation. Notice of the hearing had been given and appellant attended and gave testimony. At the hearing it was stated that the written comment period would remain open until the EIS was complete and the Commission could not make a recommendation until then.

A notice was mailed and published for the October 24, 1989 public hearing. Appellant CSC received this notice. During the hearing a representative of the Port responded to Committee questions. The public did not have an opportunity to provide oral comments at the October hearing.

IV

The permit was issued on November 9, 1989 and CSC appealed. It became SHB No. 89-73 and is the subject of this proceeding.

The final EIS on the ferry terminal was released before this permit was issued.

V

The ferry terminal is currently used in an intense way only when the ferry arrives and departs, which is weekly.

The terminal is a two-story structure, with a broad, outside ground level pier/deck surrounding the building. There is public access to this outside area from dawn to dusk, with the possible exception of short periods of time during ferry operation or adjacent uses. Tables and chairs have been placed on the pier/deck which the public can use, such as for "brown bag" lunches. Waterlevel views from the pier are generally to the north towards the Port across Bellingham Bay and to the west towards a warehouse.

VI

Inside the terminal the ferry ticketing offices are located on the first floor, along with some lockers, and a small retail store. There are some cases throughout with small displays on Alaskan subjects. In a vacant area on the north and east sides it is planned that a lunch-oriented low cost food service facility will lease space, providing a take-out window to the outside pier.

The second floor is reached by a broad stairway. There is a dome area at the north end, which has views across the Bay of the Port. A waiting area for ferry passengers is along the east side. There is a conference room on the west side. From the west side the principal view is, again, of the warehouse.

VII

The permit on appeal provides on the first floor for a retail store on the west side to serve ferry passengers, and a video arcade

1 in a small, windowless bricked-in alcove. A full-service restaurant
2 is to be located on the second floor in the dome area on the north and
3 continuing to the west side as far south as the conference room. The
4 restaurant's dining area would be on the north under the dome. The
5 kitchen would be in the north-west corner and there would be a
6 bar-lounge on the west side.

7 Glass walls would divide the restaurant from the rest of the
8 ferry terminal. The restaurant facility would be open to the public
9 for dining.

10 VIII

11 Parking for the terminal includes areas for loading and unloading
12 passengers and their luggage, waiting areas for trucks to load onto
13 the ferry, and short-term and long-term passenger parking. One
14 condition of the permit is:

15 Additional parking necessitated by the use as
16 determined by the City shall be provided on-site
17 immediately adjacent by the applicant.

18 However, at the hearing both the City and the Port stipulated that no
19 additional parking would be provided within the shoreline.

20 We find that appellant has not shown that there is a likelihood of
21 adverse impacts on trafffic or parking due to this project.

22 IX

23 Any Conclusion of Law deemed a Finding of Fact is hereby adopted
24 as such.

1 From these Findings of Fact, the Board comes to these Conclusions
2 of Law:

3 CONCLUSIONS OF LAW

4 I

5 The Shoreline Hearings Board has jurisdiction over these issues
6 and these parties. Chaps. 90.58 and 43.21B RCW.

7 II

8 Appellant alleges two procedural errors by the City relative to
9 the October 24, 1990 hearing: 1. failure to comply with legal notice
10 requirements calling for public comment; and 2. allowing the Port to
11 comment at the hearing and not allowing the public to do so. Appellant
12 contends that the Shoreline Managment Act (SMA) at RCW 90.58.140(4) and
13 the statewide regulations at WAC 173-14-070 have been violated.

14 We conclude that violations did not occur. After public notice
15 CSC had the opportunity to provide written comments, and did testify at
16 the September 22, 1989 public hearing. Under the SMA and the
17 regulations the City was not required to provide additional opportunity
18 for public comment at the October hearing. Therefore the notice of
19 that hearing was not defective.

20 III

21 We conclude that the proposed uses are in conformance with
22 permitted activities in the Urban Environment II of the Bellingham SMP.

23 Section 23 of the SMP defines that environment as:
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1 Areas where the physical character of the
2 shoreline and water make it valuable for water
dependent uses.

3 Permitted uses within this environment are those which are water
4 surface dependent or provide an opportunity for a substantial number of
5 the general public to enjoy the shorelines. SMP Section 23 C.

6 The ferry terminal itself is clearly a water dependent use.
7 Section 23 C.2. Restaurants are listed within the SMP as a use which:
8 offer[s] an opportunity for a substantial
9 number of the general public to enjoy the
shorelines. Section 23 C

10 The proposed restaurant is consistent with this provision.

11 Appellant further contends that the bar-lounge is in conflict with
12 the SMP because persons under the age of 21 are not allowed, hence the
13 "general public" criteria is not satisfied. We decline to follow this
14 reasoning. The SMP allows restaurants. We will not sub-divide the
15 restaurant in our analysis. The bar-lounge is part of that permitted
16 use. The prime viewing area in the dining area is open to all ages.
17 In addition, the terminal provides extensive public access and the
18 opportunity to enjoy expansive views from the outdoor pier/deck.

19 IV

20 Appellant further contends that the retail store and video arcade
21 are not permitted uses in this shoreline environment. We conclude that
22 in the small scale proposed here, they are permitted accessory uses to
23 this water dependent transit facility. Ferry travelers are going on a
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1 journey of at least one full day, perhaps more. They may well need to
2 make last-minute purchases for the trip. Most travelers have to arrive
3 at the terminal several hours before departure. Providing some
4 entertainment opportunity is reasonable. The area chosen for the video
5 arcade has no view of the water whatsoever.

6 Shoreline values are simply not implicated by these uses.

7 V

8 Appellant urges that an interpretive center would be a better use
9 for this terminal space.

10 The Shoreline Hearings Board's is required to function like a
11 court of law. Under the statutes we are required to determine if the
12 proposal conflicts with the local Shoreline Master Program, the
13 Shoreline Management Act or the State Environmental Policy Act. We are
14 not a legislative body which might search for optimal uses.

15 In so concluding, we note that it is unusual for the Board to
16 become involved in such internal design issues. Because the City
17 required a separate shoreline permit, these issues are before us.

18 VI

19 It is contended that the failure to provide a parking plan
20 violates Section 24B of the SMP. Since no additional parking is being
21 provided in the shoreline, this section of the SMP is not applicable.

22 VII

23 Lastly, it is asserted that the Environmental Impact Statement is
24 deficient in its discussion of parking impacts and traffic. We have
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1 previously found that appellant has not demonstrated likelihood of
2 adverse impacts. Finding of Fact VIII, above. Appellant has not met
3 their burden to show that the EIS needs to address these subjects.

4 VIII

5 Any Finding of Fact deemed a Conclusion of Law is hereby adopted
6 as such.

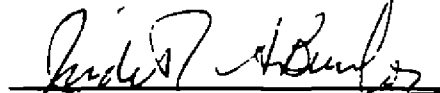
7 From these Conclusions of Law, the Board enters this:
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ORDER

The shoreline substantial development permit for the Port of Bellingham ferry terminal is AFFIRMED.

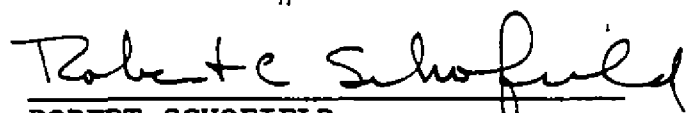
DONE this 27th day of December 1990.


SHORELINES HEARINGS BOARD


JUDITH A. BENDOR, Chair


HAROLD S. ZIMMERMAN, Member


NANCY BURNETT, Member


ROBERT SCHOFIELD


RICHARD GIDLEY